



1996

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PROCEEDINGS OF THE NINETY-SIXTH ANNUAL MEETING OF
THE NORTH DAKOTA STATE BAR ASSOCIATION

OFFICERS

DONALD L. PETERSON President
REBECCA S. THIEM President-Elect
STEVEN A. JOHNSON Secretary-Treasurer
HOWARD D. SWANSON Immediate Past President
SANDRA TABOR Executive Director

PROCEEDINGS
JUNE 13, 1996

PRESIDENT DONALD L. PETERSON: Welcome. And I would like to call to order the 1996 Annual Meeting of the State Bar Association of North Dakota. This afternoon we are going to begin with Presentation of Colors by the Fargo Air National Guard, and the National Anthem will be sung by Mr. Lyndon Boyd.

(PRESENTATION OF COLORS) (NATIONAL ANTHEM)

PRESIDENT PETERSON: I want to thank the Fargo Air National Guard for providing us with the Color Guard and Mr. Boyd for the National Anthem. I felt the stress when he hit the high notes standing here. Before I introduce the Local Committee I would like to take care of some housekeeping matters. Since we are on a tight schedule, Phil Johnson has graciously agreed to be our parliamentarian and help keep the meeting on track. Additionally, I am going to—or excuse me—additionally Ralph Erickson, Mo Holman, Jan DeRemer and Leslie Oliver have agreed to be—serve as election proctors.

At this time it is my pleasure to call upon John Irby who will give us a welcome from the Local Committee. Before he takes the podium, however, I would like to take a moment to express my appreciation and the Board's appreciation not only to John but to members of the Local Committee who did such an outstanding job again this year. Included in that group is Maureen Holman, Nick Vogel, Mike Williams, Anna Frissell, and Roger Minch. Putting on one of these is a big job, and it

takes a tremendous amount of time and energy. And we just want to say thank you for doing that. John.

(APPLAUSE)

MR. JOHN C. IRBY: Thank you, Don. On behalf of the Cass County Bar Association I would like to welcome you here to Fargo. It is indeed an honor and pleasure to again be hosting this meeting. When I was told we were going to be hosting it again, at first I was a little bit apprehensive, but Sandi Tabor and Tami Anderson have been just wonderful to work with and do such a tremendous job and it has been pretty easy. My Local Committee has been great and I hope you all enjoy it. I see the weather has been cooperative. The events have gone well and we are just happy to have you here. Thank you.

(APPLAUSE)

PRESIDENT-ELECT REBECCA S. THIEM: Thank you, John. At this point and time it is my opportunity and pleasure to introduce Don Peterson to give the President's address. Don has been a tireless worker for the Bar Association this past year. He and Mary Beth have contributed a lot of time and effort to helping our Association go. He has been very conscientious, very dedicated. Among the projects that we have been able to accomplish under Don Peterson I'll tell you it is no small task being a member of the Board of Governors as we had, I believe, four meetings talking about long range planning and anybody who has been involved in any long range planning knows what a grueling process that is. But Don has kept us on track, made us do it even if which didn't want to do it and so I would ask that you please welcome at this time Don Peterson to the podium.

(APPLAUSE)

PRESIDENT PETERSON: Thank you so much. I promise to keep this short. Jack Marcil said his speech is going to take a couple hours, so I want to give him all the time we can.

I want to say on my behalf and on behalf of my wife, Mary Beth, that it has truly been an honor for me to serve as your President. It is an experience that I wish everybody in this room could have. It causes one to see—you get to do a little traveling and you meet other lawyers from other states, and in doing that you find out what a truly tremendous group of people this—our Bar Association has and is. I have been fortunate this year. I told this to several of the local bar associations that if you are going to be President of the State Association to do it the year I did it because it just so happens that you get to go to Hawaii, and there is no legislative session. So I have been fortunate in that respect. And I have also been fortunate in having a truly great Board of Directors that has really been conscientious and done a lot of work. And the other

person I would like to recognize at this time is Sandi Tabor, our Executive Director. She does so much that goes unseen, but I think you can see her work by how smoothly this convention comes off. There are just thousands of things—in addition to the local groups, there are thousands of things that have to be done, and she keeps us on track. Sandi has a good relationship, I know, with the judiciary and with the legislature, and I think we are very fortunate to have her. And from my standpoint, Sandi, I just want to say thank you for your hard work. (APPLAUSE)

I am happy—and we will get a financial report later from our Treasurer, but it is always fun to come and tell the Association that we are in very sound financial shape. And, again, that is in no short part due to the work of the Board of Governors and to Sandi. We do face a challenge, I think, as lawyers. Again, there is no shortage of lawyer bashing. You talk to lawyers and they say it is no fun to be a lawyer anymore. And that can get you down. But if you get to serve in a position like mine and you meet some pretty fine people, it is all well worthwhile.

I think the biggest challenge that our Bar Association has is relevancy. When you think there is, what, how many lawyers, fourteen, fifteen hundred licensed lawyers, and while this is a wonderful turnout, that this group is going to conduct much of the business for that association, I think that speaks volumes on how other lawyers view the relevancy of our bar. In going around the country in some of these meetings, there is a move under foot to change unified bars, which we are, to voluntary bars, bar associations. And I think that would be a tremendous mistake. I think we have within our power in a small state like North Dakota to do the business that we can do. So I really urge us to keep that in mind. Our Bar Association is very fortunate to have a Chief Justice like we do. Justice VandeWalle is always open and ready to meet with us whenever we have asked him to be. And we really must support our judges in their efforts. And we have pledged to do that.

We also—you heard from Dean Davis. In these times we enjoy a tremendous relationship with the law school. And I think the law school can be even used more as a resource for various projects. But, again, we are fortunate to have a good relationship.

And the last thing I want to talk about is that going around in almost—in some of these larger metropolitan areas people apologize for being a lawyer. And I want to tell you we have nothing, as I said, to be ashamed about. We have probably one of the finest Bar Associations that I have ever seen, and I have compared them to all the states going to the national meetings. But I urge each and every one of you in these

times to take it upon yourself to be responsible for the message of what being a lawyer involves. We gave away to Dann Greenwood an award for community service. And I am sure most of the people in this room donate literally hours to community service but that message doesn't get out. How many of you call up the news when you hear a message that is not quite true about lawyers? I don't want to make any comments about any particular causes, but there was the one with the bowling ball shattering the state of North Dakota implying that somehow lawyers were at fault on the Workers Compensation Act. How many of you took the time to call up the Greater North Dakota Association to complain about that? I bet you not many people do. I think things like that give such a false impression to the public that we cannot afford to let those things go uncomplained. So I just—I want to urge you all to be proud of your lawyers and to know that we are lucky to be in a state like North Dakota where it is a profession and it is an honor to be a lawyer.

And, again, I want to tell you thank you for letting me serve this past year. I leave with one small fear. After me there appears to be two women in succession who are going to be serving in this office, and I hope I am not the last of a line. If any of you read English history you know Queen Elizabeth—anyway. So with that—with that I want to—I want to again thank you very much and say it has been a fun year. It really has. Thank you. (APPLAUSE) It now is my extreme honor to introduce to you for his remarks, the Chief Justice of the North Dakota Supreme Court, Justice Gerald VandeWalle.

(APPLAUSE)

CHIEF JUSTICE GERALD W. VANDEWALLE: Thank you. Good afternoon. You know, I discovered that when district judges retire they get a little lazy and Jim O'Keefe keeps asking me if I am going to read this to him. Well, I am not, Jim. If you want to know what is in here you are going to have to read it yourself. It is there. And I am going to keep my remarks brief.

But I would like to go over a few of the items that are in there, just touch on them lightly. Let me start with court unification. We are down to forty-six judges. And I have to tell you the last cut at Wahpeton didn't come easy. It was tough. It was a tough decision for the Court to make. It was tough for the City of Wahpeton. It was tough for that District. They are not going to get any easier. We are discussing what the appropriate number of judges is. Unfortunately, we don't know. We have not yet had enough experience with the unified system to really say this is the required number of judges. This is the precise number of judges that we need in North Dakota. But we are looking at it. Many of our—the stories we are hearing about shortage of judges are antidotal. It

is hard to trace them down. But we will be working on it. There may be some legislation introduced to the next session that will amend that number. I can't tell you at this stage of the game what it will be. The District Court workload, and remember we only have one Court now, is going along fairly smoothly. They had a 6 percent increase. One of the big issues on the table in front of the presiding judges and has been an issue for the last couple of years and continues to be an issue is court reporters and what model we are ultimately going to come out with. I told you last spring at the meeting that we were bringing on a State Trial Court Administrator. We revamped that a little bit in the interim and we decided that we cannot do it with one. We now have two State Trial Court Administrators at our level. Greg Wallace who has been with us assumed one of those positions, and Ted Gladden, a long time Court Administrator, recently in Minnesota, has come back to us. And Ted and Greg are now working. They have been going for a couple months. They are working a portfolio system. And I am very pleased with what I have seen so far from them.

One of the other important things I should tell you that I see disappearing, and I compliment the lawyers on it, I think it is perhaps due to you, but the presiding judges did a little study on the demand for change of judge which has been such a bone of contention between the trial court and the lawyers. We have a very liberal demand for change of judge. I am very pleased to tell you that the presiding judges tell me that except for very rare instances, that is not abused, and I compliment you on that. And I do not foresee that the judiciary will be asking for any changes in that demand for change of judge law. The Appellate Court, we had an 8 percent increase. We continue to look at rules. We are trying to keep up with technology and figuring out how many words get on a page. Remember, Penny and Colette, our clerk and deputy clerk, are only the messengers, and please be patient with them as they try to work with us and with you.

We also have brought Ted Smith on as the law librarian. He came to us from UND's library, and he is a wonderful resource. Ted has done a great job for us. And I asked him if I could say this, and he said I could. Those of you people that may be having some problems with your library, have some questions to ask, what is available out there, call Ted. He is a wonderful resource, and he would be delighted to help you.

Let me talk about a few things very briefly that are going on that I think you should keep your eye on in the future. One of them deals with juries. I heard a presentation by the Chief Justice from the State of Arizona at the Conference of Chief Justices concerning what they are

doing with juries, and it was really exciting. And they subsequently held a conference, and they sent out this flyer, and so I asked the Court to authorize a team to go down to Arizona and attend the conference, and they did authorize it. And Judge Robert Holte from Stanley, Ron McLean, a lawyer from Fargo, and Ted Gladden, who has the jury portfolio under the Court Administrator's Office, went down there. I am not saying we should adopt everything that Minnesota is doing—Arizona is doing, but they are looking at some interesting things. Jurors' notes, questions by jurors, a whole range of things. And our—I think perhaps our Jury Standards Commission will be looking at some of those things in the future. We have formed with the Bar Association a Joint Dispute Resolution Committee. They are in the process of working. They are staffed by Jan Seaworth. And I am looking forward to a report from that committee. The Joint Task Force on Family Law has continued its work. It has made some recommendations to the Court. We have adopted the Case Management Rule. We have some rules that they have proposed to us that are still under consideration that we have not yet adopted. The Case Management Rule will be effective August 1 of this year. As Don has told you already, there is good cooperation between the bar and the judiciary. I am very pleased to be able to hear from and to call on the bar leadership, Sandi, when we have some problems, some topic of mutual discussion. I think we are at the point where we not only make suggestions, we now offer constructive criticism to one another with the understanding that it is meant for the best efforts. We have taken some. We have given some. The bar has done the same. It has been a very, very beneficial exchange between us. Sandi and I talk frequently. I am so delighted that she is now City Commissioner. I have two potholes on my street that need repair. I'll tell you where they are, Sandi, as soon as we get back to Bismarck.

SANDI TABOR: We'll have them fixed on Monday.

CHIEF JUSTICE VANDEWALLE: Seriously I do thank Sandi, Becky, Don for their cooperation. Don wasn't able to be there, but Sandi and Becky met with the presiding judges at a dinner meeting, and it was an interesting discussion, a very free flowing discussion, a very honest discussion back and forth. And it is going to benefit all of us.

One of the last things, let me tell you that it is my privilege to be able to serve on the Council on Legal Education Admission of the Bar of the ABA, and we just had a meeting in Portland, Maine from Sunday through Tuesday of this week.

We are revising the standards for the accreditation of law schools. And one of the things that we have amended, and we will propose to the

ABA that they adopt, is the Preamble to the Standards for Accreditation. And let me read part of those—part of that Preamble because I think it is something that ought to be guiding all of us, not only as law school graduates but as lawyers and judges. And we propose to the ABA that they insert in the Preamble the following language, a phrase requiring that law school education insures that every law school graduate understands his or her ethical responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice and insuring that each law graduate understands that law is a public profession, calling for the performance of pro bono legal service. It is a good preamble for all of us. Thank you.

(APPLAUSE)

PRESIDENT PETERSON: Thank you, Justice VandeWalle. Before we hear about the Association's financial status I would like to take a moment at this time to remember those members who passed away during the year with a moment of silence. Could we please stand for this? (MOMENT OF SILENCE) Thank you. Next we will hear about the Financial Report from our Treasurer, Steve Johnson.

MR. STEVEN A. JOHNSON: Good afternoon. Before I start my report let me point out that a copy of Sandi Tabor's Gavel article concerning the 1996 budget as well as the 1995 audit are located behind the General Assembly tab in your Annual Meeting binder that you all received. The Board of Governors was pleased with the findings of the 1995 audit which received a clean opinion from the auditors in all statements and are happy to report that we continue to avoid spending more money than we generated.

The 1995 management letter contained only two notes, one involving the small size of the office staff and the other concerning a travel voucher and advance. The latter matter was dealt with by the Executive Director, and the Board does not anticipate any further problems. The 1995 audit reflected year end assets of \$302,735, which included \$130,487 in restricted cash assets, \$16,188 in equipment, and inventory of \$14,934. The restricted cash represents money held by the Association for the sections, the Volunteer Lawyer Program Grant, Client Protection Fund and CLE Commission. In particular, the \$12,415 of the IOLTA Volunteer Lawyer Program moneys not spent by the program, this money was refunded to the IOLTA program in March of 1996.

Our overall fund balance at December 31st, 1995, was \$242,381, \$120,225 of which was unrestricted funds and \$122,156 which represented restricted funds. The unrestricted fund balance of the Association's general fund gained approximately \$50,000 in 1995 due in large part to

continued refinement of our fiscal management policy. During the year the Association generated \$536,158 in unrestricted revenues and \$111,808 in restricted fund revenues for a total of \$647,966. A portion of this increase reflects the Client Protection Fund balance of approximately \$36,000. License fees represented \$319,668 of the unrestricted revenues, or 49 percent, of the total revenues.

Our expenditures of \$562,460 included administrative expenses of \$259,888, disciplinary expenses of \$43,328. Included in the administrative expenses were CLE seminar costs and office overhead. Disciplinary expenses included payment of \$36,000 to the Disciplinary Board for costs associated with the inquiry committees. With that brief overview of the 1995 budget, I would like to now turn to the 1996 budget.

The overall projected revenues for 1996 are \$576,615. License fees represented 54 percent of this figure. Other sources of revenue include CLE seminars, Annual Meeting and the Volunteer Lawyers Program. Our total projected expenses for 1996 are \$544,605. In addition to salaries and employment taxes, other expenses included in this projection are expenditures associated with the operation of the CLE programs, the Annual Meeting and Volunteer Lawyer Program. Our goal is to insure that these three programs are self-funding. The Board is pleased with our operations to date this year, but we are continuing to review areas in which controls can be implemented. Hopefully we will be able to continue to present good news in the years to come. Thank you.

(APPLAUSE)

PRESIDENT PETERSON: Thanks, Steve. At its meeting in May the Board of Governors voted to endorse a retirement program sponsored by the American Bar Association. All licensed attorneys in North Dakota will be eligible to participate in the plan and ABA membership is not a requirement. The Board is excited to be able to endorse this program. And here this afternoon with us to tell us more about it is JoAnn McDermitt.

MS. JOANN MCDERMITT: Thank you. Can you hear me? I work for State Street Bank and we are located in Boston, Massachusetts. Oops, technical difficult. There we go. State Street Bank. I don't know how many of you are familiar with State Street Bank. Nobody?

MR. JACK G. MARCIL: Phil is.

MS. MC DERMITT: The reason why I ask is because we are—well, you can see our statistics here. But we are the No. 1 custodian in the world for assets. Someone was talking about how lawyers, people don't like lawyers. We love you. Okay. Back to my program.

We are the third largest 401K manager in the country also. We have 50 billion dollars in 401K assets, and we service over 1.8 million participants. The ABA hired State Street Bank in early 1992 to take over the management of their program. It has been in existence for thirty years, but we have only had it since 1992.

The focus of our program—through demographics we understand firm and participant needs. Appropriate plans are established based on the needs, and we specifically identify trends of the legal community. Based on the needs and the trends we develop service features and plan functions that satisfy their needs. And this is a list of the focus of the program (indicating). Our commitment to your bar is exactly what I am doing. We are an exhibitor. You folks really call the shots. If you wanted us to come in and speak on a specific subject about retirement we would be happy to do that. We handle seminars. We do panel discussions, and then correspondence, of course, meetings with individual firms. Participant education. Give someone a fish and you feed them for a day; teach them to fish and you feed them for a lifetime. That is the focus of our program to educate versus give advice.

Plan options. We are finding growth in the 401K area is phenomenal. You will see a slide later that tells you we have over 400 since 1992 join the program. And most people now—there is a tendency, the trend now is no more defined benefit. Everybody is in defined contribution. Business employee benefit solutions, consulting services. These are a list of everything that we do. We have a complete service. We have a pre-approved plan. It has already been blessed by the IRS. We offer the trusteeship, the investment services, discrimination testing, 5500's, all of that, at a very, very reasonable cost. There is not a cheaper—I shouldn't say that—a less expensive provider in the country. There you go.

Pre-approved plan. I don't know—age-weighted has become a popular type of plan so now, of course, we have implemented that. What it does is it takes—it is based on the age of your population in your firm, so it tends to favor, it doesn't discriminate, but it favors the older people in the firm. Okay. This is what we do when we are talking about—when we go out and talk to groups that are implementing our program, we have what you call the beginner. And for the beginner we have a group of funds that we—that are asset allocation funds. They are lifestyle funds. Then we have the planner, who is a little bit more savvy. And they are involved in our core funds. And then we have the investor who uses our self-managed accounts. And this is a copy—this is a picture showing you how the structured portfolio service works. It is hard to

see. But what happens is it takes all of our core funds and divvies up proportionate—well, depending on what type of portfolio, you have conservative, moderate and aggressive, and it is proportioned according to the—what would you call it—the tolerance, investment tolerance. So the conservative portfolios 65 percent fixed and 35 percent equity. The moderate is 65/45. And then aggressive is 75/25. It is hard for you to see. This goes—with the funds, the eight core funds that we have, you have everything that is conservative as a money market fund, which is a stabilized asset return fund, and then we have everything in the whole spectrum of balance fund, intermediate bond fund, value equity, and then we have an international fund. That is our most aggressive. And then again I want to explain the investor, the self-managed accountant person who does their own thing. They buy their own stocks. They use our discount brokerage. We are as cheap as Schwab. So you get very good deals when you handle your own account.

Now, again, we pound home the educating versus giving advice about the—of the participants in the plan. You can see when we took over the plan in 1992, 1.6 billion dollars, and of hat 1.6 billion dollars, I can't even read it, I think it is like 64 percent was in the fixed market. Now there is only like 29 percent. And that is due to educating the population because over time the equity market is the place to be. That's going to be the end of my show. Now, what we do is I have—I am an exhibitor here, and I have all kinds of information on the program. We are—we compete with—Fidelity is No. 1 with regard to the assets that they manage; Vanguard is No. 2, and we are No. 3. There are right now 5,000 law firms involved in this program with over 2 billion in management. So we are high tech, a great organization, and we would love to have your business. We look forward to working with you. Thank you.

PRESIDENT PETERSON: It is nice to hear that somebody loves attorneys. I now would like to call upon one of your most distinguished members of the bar, Jack Marcil, who will present a report on the North Dakota Bar Foundation. I think—I would like everybody here to know that this meeting is the end of his tenure as Chair of the Board of Directors of the Bar Association. Now some of you say—did I say?— Bar Foundation. Excuse me. Some of you may say it is about time. But before Jack does speak, I want to express my appreciation and the Board's appreciation for all his work in organizing in particular the silent auction which is going to be held during the reception tonight. With no further ado, Jack.

MR. MARCIL: Thank you, Don, for those kind words. My presentation is going to be short. I just want to tell you a little bit about what

we have done this year. I think last year I was up here and we went through what the Association had done, the Foundation had done last year, and we have accomplished what I believe have been some very worthwhile goals.

One of our things that we try to do is educate the people of North Dakota about the justice system and the legal system. I think we are working on that. I think we are fulfilling that goal. One of the things that we constantly work on is the IOLTA accounts. Across our state there are 396 IOLTA accounts in all of these 96 banks, and that has generated for us in the last year about \$56,000 in interest payments. And what we are trying to do is out of those 96 banks we have only got 58 who have waived that interest, and we constantly work on that. Because if we can get rid of those service charges we are going to have more money to do some things that are very worthwhile.

One of the things that I wanted to tell you about is in the last year we have again given three scholarships to three outstanding students at UND. We are very supportive of that institution. We have given \$200 to the North Dakota Association of Legal Secretaries for scholarships. We have given a thousand dollars to the North Dakota Law Review for their 1995 review symposium. We have given a thousand dollars just recently to Murray Sagsveen to do a case law study on medical malpractice in North Dakota. I would urge you, too, to—you know, we have the memorial donation envelope which I know some of you use. We would like to see you use it more. It is an important thing for us, and it is a very fitting way to recognize some of these past life achievements by giving a donation to the Foundation. We are going to have a meeting tomorrow at 8 o'clock for any of those that want to come to our meeting and get some of the specifics about our financial situation. I want to tell you this though, on behalf of the IOLTA Committee, they made two major grants this year, one for over \$46,000 to the Volunteer Lawyer Program and over—over 46,000 to LAND. And as you all know, that is money to help offset the cost of providing legal services to the poor, a very important function.

They have given another 3,500 to the Southern Minnesota Regional Legal Services for Legal Aid in the Fargo-Moorhead area, a very worthwhile cause, and two grants for about 3,000 to help in the publication of the human rights booklet and Graduating Into an Adult World. So overall I think that the Foundation has been doing very well. It has really been fun for me. I have been on the Board for six years and four years as the Chair. And I have enjoyed it, the quality of people and all of you that have joined the Foundation by your contribution. It has been just really a worthwhile time for me and for the Foundation.

Last year we had a silent auction, and again—we are going to do it again here. We have had—Hilda Twitchell and JoAnn Johnson have worked to gather things. I have worked and my office has worked, and I think it is going to be really a fun auction. We have complimentary soft drinks and beer and wine and hors d'oeuvres, and some of the firms in Fargo-Moorhead have contributed generously to make that free for all of you that attend. And what I really want to urge you to do is to help us get some more money in terms of the worthwhile things that we do. And you will have some fun. The silent auction is really a concept we came up with a few years ago. It is a lot of fun. We want to have you come. And it is a good time to purchase things. Ron McLean knows that I have got a Chuck Knoblauch baseball which I know he is going to be bidding on and probably other people here, too. So I thank you very much for all of your help.

Keep supporting the Bar Foundation. I continue and will continue to support the Bar Foundation in the future, and I do appreciate all that you have done for us and thank you for letting me serve in this capacity.

(APPLAUSE)

PRESIDENT PETERSON: Thanks very much, Jack. Now I would like to introduce Sherry Mills Moore who has been working on family law issues for the last three years. She—I was discussing with her how she can possibly stand working on family law issues for three years, and she came—she told me that the reason is, and I really wondered why, and she said because it is so worthwhile. And I said well, why is it so worthwhile? And she said because it is so expensive. I said what do you mean, why is it so expensive? Why are divorces so expensive? And she told me because they are worth it. Oh, well. Okay. The script says that working on family law issues would seem like an eternity. That is probably true. But all kidding aside, Sherry has volunteered hundreds of hours to our Association, not only in the area of family law but also is on the Volunteer Lawyer Committee and the Editorial Board. In addition, tonight at our banquet we are going to be honoring Sherry for her efforts as recipient as the Outstanding Committee Chair award. This afternoon she has agreed to discuss the recommendations of the Joint Task Force on Family Law. Sherry.

(APPLAUSE)

MS. SHERRY MILLS MOORE: Thank you, Don, especially for the joke. In January of 1995 the Supreme Court gave an administrative order forming the Joint Task Force on petition from the Bar Association. In April of—or in March of '95 Howard Swanson appointed seven

members from the bar and in April Justice VandeWalle appointed seven members from the bench. So we have had approximately one year to do our work.

Our charge was—there were three letters, so I guess it was threefold: To evaluate the need for changes to insure accessibility to the system and responsiveness of the system; to assess the impact of court unification; to evaluate the effectiveness of the process for clients, attorneys, and the Court.

We worked on it for twelve months tackling some difficult issues and some turned out not to be so. We identified the issues we thought needed to be examined, and then we did that. We looked at what we are doing. We looked at what other people are doing. We were involved in the demand for change of judge survey. We sent out a survey for guardian ad litem. We read treatises. We read Law Review articles. We read cases. And we grumbled. And all in all we did as thorough a study as we could of the issues. And the issues that we were—worked on were through three subcommittees and they were the parent education, how to use it in our court system; the—and, for example on that, there was a strong subcommittee view that we should have mandatory parent education, but there was a strong aversion to a mandatory anything. And we concluded we didn't know enough about what went in that, so we had someone come and show us the program. And while we didn't switch to mandatory we were far more supportive having seen what was done. So we looked at parenting issues.

We looked at post-judgment custody modification. We had a statutory review group that has looked at all of the statutes that involved domestic relations to clean up our language to make them more consistent and to make them work better together. We looked at the guardian ad litem issue to see—to try to figure out how they ought to be used in court, what is the best way, what are the restrictions that should or are put on them. And we looked at domestic—at the request of the bar and particularly the bench, we looked at the factor of domestic violence as a factor of custody. From our work we have made—we have written a report and we have made recommendations. The report was presented to the Board of Governors and approved yesterday. And although I am not sure who it is available to other than probably Sandi Tabor, I think it would be available to anybody who wanted to read it.

Our recommendations—there were eight of them. The Task Force recommends that the bench and bar strongly encourage participation of the parties in parent education programs. And by educating the bench and bar as to the availability and desirability of these programs, as well as

suggesting methods of incorporating parent education into the court process that we support.

The Task Force recommends that the court administrators and presiding judges continue to gather information on frequency of demands on post judgment issues, but that there be no statutory changes pursued at this time. We proposed legislation to alter the post judgment custody through a couple changes, one through a tightened process, and the second is a more stringent threshold for change of custody in the first two years. The actual language of the proposed statute is attached to the report. The Statutory Review Committee could not complete its work. It is too mammoth, too far reaching, and it needs to be done right. But that group worked very hard and is probably half way through their task. And one of our recommendations was that we continue a little longer and finish up some of the projects, and that is one of them. They did, however, recommend, and the Task Force recommends that we eliminate fault as a basis for divorce and a factor in division of property and spousal support.

We also recommend a repeal of the criminal statute dealing with adultery. It is not a prosecuted crime and it is used as a shield through the 5th amendment to protect the adulterer. Domestic violence as a factor of custody, we did not complete our work. It is an issue that eats up lots of court time and attorney time about the protection order interplay. Custody statutes and protective order issues need to be examined more thoroughly, and we will then make recommendations.

We recommended that—we worked with the Alternate Dispute Resolution Committee who made a proposal to us about a project for mediation, and we approved the conception of that and asked them to work out the details before final implementation. And we recommend that we continue to work on how to implement mediation in family law. And then the final recommendation of the Task Force is that we continue our existence for another year and a half, that is through December of 1997 to complete our work.

I want to thank the Bar Association for putting its resources into this and the judiciary for putting resources into it and for appointing good members of the bench and good members of the bar. Thank you to Howard for that. I want to say that it is kind of a fun task and it is a lively group, and they are experienced and educated and interested, and so it has been a good process. And I want to thank all of you and continue to tell you that particularly now that the family law practitioners have lots of thoughts on these areas—and we welcome suggestions, thoughts, criticism. Just as the ad hoc committee did, we always are

willing to listen to your recommendations, your suggested changes. I am sure if you send them to Sandi Tabor she will see—she will get them to someone who will put them into the thought process. I also want to thank Sandi Tabor. I, too, am very glad she is a City Commissioner. I don't have potholes but I have parking tickets. Thank you.

(APPLAUSE)

PRESIDENT-ELECT THIEM: Thank you, Sherry, and your committee for your hard work. You are spending a lot of hard time and effort on this project, and there will be an article in the Gavel summarizing the recommendations of the committee. And if you do want a copy of the report, be sure to contact the bar office to get a copy of the report. Before I introduce Linda Catalano to give us an update of funding of Legal Services, it is time for us to honor our members who have given fifty hours or more of service, of pro bono service to the Volunteer Lawyer Program. We have a couple of lawyers who were unable to be here. Pam Hermes gave 50 hours of pro bono service. Jerry Brantner also from the Vogel law firm gave 247 hours of pro bono service, unfortunately on one case, so you kind of know—but I don't know anything about the case. Other members of our Association who I understand and hope are here who have given 50 hours of service are, first, Duane Breitling. Would you please step forward and accept an award, please? (APPLAUSE) Darcie Einarson. (APPLAUSE) Ronald Galstad. Is Ron here? (APPLAUSE) Tom Merrick. Is Tom here? (APPLAUSE) Next are the attorneys who have given 100 hours of service: Lynn Boughey. (APPLAUSE) Jane Dynes. (APPLAUSE) Dann Greenwood. (APPLAUSE) Jane Voglewede. I know Jane is here. (APPLAUSE) Harold Bergquist. (APPLAUSE) On behalf of the Bar Association we want to thank all of you for all of your hours of service. We all know that we are very busy. And when you think about what those hours mean in dollars lost to the bottom line, you realize that those are—that's substantial service that these members are providing to the public and to the bar. This is getting very professional. You notice we have upgraded our picture taking. Very nice.

Something that I hope that we all think about in the coming years is a program where we can get more young lawyers involved in providing pro bono service by possibly combining a young lawyer with an older lawyer so you can have a mentoring system, a good way for a more experienced lawyer to help pass on some of the information that they have gained. And I know that the Women's Section has been working on a mentoring program involving the pro bono service. So I hope that is something that we can all, you know, think about this upcoming year and come up with some way to do it.

As you all know if you have been keeping track of what has been going on in Congress, Congress has taken action which could ultimately lead to significant elimination of funding for the Legal Services Corporation. This will have a huge impact on the way that we deliver pro bono and reduced fee services here in the state of North Dakota and severely limit the ability of our lower income citizens to have access to our court system. Linda Catalano is here today to provide more information regarding this serious turn of events as well as anything else that is going on in the area of Legal Services. Linda, you can come forward.

(APPLAUSE)

MS. LINDA ANN CATALANO: Thank you, Becky. I hope some of you note that I am walking a little bit better this year. No crutches. No shorts. No t-shirt. But I feel a lot older this year. And it could be because I have been admitted to practice for over twenty years, could be because I have been in legal aid every day that I have been admitted to practice for over twenty years. It could be that I am just getting older. But I think mostly it is because last week my son told me I looked a year older than Sean Connery who is 65 years old. Out of the mouth of babes. But he said it is the truth, Mom, it is your wrinkles. Anyway, I'll try to be very short. I have been asked to keep my presentation concise. Some parts of it will not be too sweet.

First of all, I want to take some time because I may not have the opportunity in the future to thank a number of entities and individuals who have been very instrumental in the survival and meaningful delivery of legal services in the past twenty years in North Dakota. First of all there is the Supreme Court under Chief Justice Erickstad, and now under Chief Justice VandeWalle undertaking the study passed by the State Bar Association to look at the delivery of legal services to the poor. Many of us remember that study resulting in a workable plan. Well, I want to remind you that that study resulted in the filing fee surcharge legislation that brings in \$140,000 a year in state revenues through the filing fee for Civil Legal Services to the Poor, and if we remember, we should remember it for that purpose. I would also like to thank the Supreme Court for its leadership in adopting the Supreme Court IOLTA Program Rule which allowed for the contribution that Jack Marcil talked about to Civil Legal Services programs. And there were years when 100 percent of the IOLTA money went to Civil Legal Services to the Poor. And to the members of the bar and judiciary who supported that Supreme Court rule and supported placing a high priority for funds to go to the delivery of legal services to the poor. I want to thank the members of the bar. Orlin Backes was Chair at the time. We established a formal Volunteer

Lawyer Program funded with Legal Services Corporation dollars, and all the many, many hours over the years that volunteer attorneys have placed in delivering services to the poor. Last year over 450 cases were closed, most of those contested custody or divorce cases. I would also like to thank all the active members of the Joint Committee on Civil Legal Services to the Poor who yearly try to rack their brains to come up with ways that can improve the delivery, make people understand how important this is to the people of North Dakota and to the country the concept of access to the courts for all people

But there is a new era coming about now, and things have changed, and they are changed, and they are going to change some more. I call it the era of HR 3019 which was passed on April 26th, 1996. It is an era in which legal services programs in the state of North Dakota received a 33 percent cut in funding. It is an era in which North Dakota Legal Services and LAND, between the two of us who serve 90, 95 percent of the low income clients in the state, have two full-time staff attorneys between the two programs and one director of litigation, who is running for district judge, who doesn't have any litigation to direct anymore because quite frankly I don't know what litigation we will be able to do anymore. We have the law school who has a clinical instructor, Larry Spain, and who has a staff attorney in Ruth Jenny and a couple of other attorneys working in the Native American Law Project. Ruth Jenny's position is funded primarily through LAND subcontracts. And when LAND passes through its LSC dollars this year it will restrict things that the clinical program can do, and we are looking, it may well restrict things that the university can do.

For those of you who don't know it, the Volunteer Lawyer Program is no longer funded by Legal Assistance of North Dakota because the bar could not operate with the restrictions under HR 3019. And it is now operating as its own sole and independent project, the Volunteer Lawyer Project. And I thank the bar for taking that project on because if Legal Aid goes down there won't be anything between low income people and the court system and access to the court system to facilitate that but the Volunteer Lawyer Program. It is one in which the types of cases that Legal Services programs can do are the types of cases that many of you in your daily practice every day do and can do. And that may not seem like very much to you because we all know there are more family law problems than we can ever undertake, but I remind you that LAND and NDLS have tried to focus on the types of legal matters that the private bar do not have expertise in such as public benefits, such as tribal law and tribal matters.

As a result of 3019 these are some of the examples of the restrictions under which we must now operate: We cannot do any more class actions. We have one class action pending right now. We have to be out of that class action by August 1st, 1996. If we are not out we are out of compliance through the Legal Services Corporation Act and federal law. And I don't know what the—what the sanction will be, but if anyone out there wants to pick up a class action involving the delivery of child support services by the state of North Dakota on North Dakota's Indian reservations, we would be more than happy to turn the case over to you.

We cannot do any more legislative or administrative advocacy with LSC funds, not even if we get a written request from a public official. We can spend administrative time and money and gyrations with our book to perhaps use surcharge dollars to do that, but what we are trying to do administratively is streamline our accounting system and not finagle this this way and this that way. With LSC funds there is no legislative or administrative advocacy whatsoever. What that means, for example, is that we have staff that sat on the Welfare Reform Task Force and was part of the discussion about what welfare reform should look like in North Dakota before it went into effect, not worrying about suing the state after it goes into effect. That is no longer allowed, not even with surcharge dollars.

Welfare reform is a very controversial topic. It is a hot topic. And a couple of legal aid programs, one in California and one in New Jersey, sued the states on challenging welfare reform initiatives that were being processed in those states. As a result there is now language that says no legal aid program receiving LSC funds can do welfare reform work. Welfare reform work is involved in any case.

The challenge is in any way, shape or form any law in effect at that point and time. So if when you start a case the state is not compliant with federal law, you can't raise that issue in a court case. If the state regulation is not consistent with state law, you can't raise that issue. So what it leaves you is factual determinations in public benefits cases. We cannot be involved in any cases in which we claim or attempt to collect attorney's fees no matter what the source of those attorney's fees might be. And that not only affects us as staff people but that affects our private attorneys working at \$35 an hour. It would have affected the Volunteer Lawyer Program had it stayed under Legal Services Corporation. We cannot seek attorney's fees in our cases. We are not allowed to provide training to any attorneys in any of the areas that are prohibited under this Act. That means we can't do attorney's fees cases. We can't train as we did three years ago attorneys on the various aspects of

collecting attorney's fees under state and federal law. We cannot train attorneys to do welfare reform litigation or even basic public benefits cases that challenge current law because that is a prohibited activity. We cannot train attorneys to do any type of a case that we can't be involved with.

We cannot—our staff now has to obtain a statement from all clients if they are involved in pre-trial, pre-litigation settlement negotiations as well as litigation a statement of facts upon which the case is based signed by the client in our file for public inspection to make sure that we are not developing any frivolous cases. And this is not just litigation. This is pre-trial discussion before there is any litigation filed. We cannot represent any person who is in jail. This is not representing prisoners who are incarcerated who are challenging the terms of their incarceration or their rights while they are in prison or in jail. This is somebody who maybe got picked up for DUI, put in jail, was on the way to a legal aid office to try to obtain a Protection Order. That person is in jail, and the day that person tries to contact us, we cannot represent that person. If that person goes to jail after we started representing them we have to get out of the case. That is our understanding. It is not just prison. It is jail.

And, lastly, the last restriction I want to point out to you is that all of the funds from Legal Services Corporation taint all of the funds we get. Whether it is the attorney campaign, whether it is surcharge dollars, whether it is IOLTA funds, whether it is United Way, whether it is Northwest Area Foundation, we have to write a letter to all of our other grantors and tell them if they don't like the terms brought about by the Legal Services Corporation and this law, then maybe they don't want to give us money.

Can you see a pattern of practice in all of this? Can you get an idea of what is trying to happen? Can you understand why people who have been in legal services for twenty years are thinking that have we wasted our time? Well, we know we haven't because of all the people we have helped. But our hands are so tied now that we can't help create any solution to this problem. Every way we turn we are cuffed. There is now a separate Inspector General's Office. If there is a complaint about us, it doesn't go to Legal Services Corporation. It goes to a separate Inspector General who has no connection other than by funding to the Legal Services Corporation and holds a separate office and who will personally investigate and perhaps publicize every investigation of every alleged wrongdoing by the Legal Services Corporation.

There is some more changes that have already taken place or will take place in the near future. One, last year we had to dismantle the

Thursday evening legal assistance program in which government attorneys and corporate attorneys every Thursday night spent two and a half hours screening and giving advice to low income clients who called in from all over the state. They provided advice to over 700 clients a year and saved thousands of hours of intake time for our staff. That program is no longer in operation due to an Ethics Committee opinion, and our staff is now trying to provide that screening function. Starting next month probably our staff will not provide that screening function anymore. We don't have the staff to do that. We don't have the time to spend a half to three-quarters of a day a week screening people we know we can't represent. There probably will be no more LAND-sponsored Run for Justice, and that was one of the groups of people that I wanted to thank because four years ago in Bismarck we started as a celebration of Law Day, the Run for Justice which was hopefully a positive, visible manifestation of lawyer community in this community. We cannot afford the time. It takes many, many, many hours of time to put that on, and there have been many volunteers that have worked on that project from the state bar, members of the bar, members of the community. We will not be able to lead that effort anymore. If it is to continue, someone else will have to pick that up. Now we—as I said, we aren't able to hold the hands of the bar and say this is what needs to be done or recommend that's what needs to be done. It is the time for the bar, the judiciary, the executive branch of government, the legislative branch of government to sit back, look at this issue, think about what the justice system means in North Dakota and take some action on their own. Where to compromise. We are not just talking about cutbacks. We are not just talking about tightening of funds. We are not just talking about restrictions. Last year there was a three-year plan developed for the funding of Legal Services in the House of Representatives. The first year the funding would go to 278 million which is a one-third cut. That took place. The second year the funding was to go to 141 million, a two-thirds cut. In 1997 and the third year would be 0 funding, federal funding to the Civil Legal Services to the Poor. Well, the first year we got a one-third cut, \$278 million. This year in the budget resolution there wasn't 141 million allocated. There was 96 million allocated. That is a 77 percent cut in funds from what we were funded at in 1995. Not only that, but the Chairman of the Ways and Means Committee of the House has stated publicly, and it was in the Washington Post, New York Times, couple of others, maybe the Wall Street Journal, that he will now start enforcing a rule which says if a particular entity does not have a re authorization he will not allow an appropriation to be enacted, to come to the floor in the House of Representatives. And he listed five or six primary targets for

the enforcement of that particular rule, and at the top of the list was the Legal Services Corporation. What that means is if we are not coming out of the House and the State Justice Appropriation Bill, the Senate can put us back in, but the Senate has to cut somewhere else, and that failed to come up with any money at all for Civil Legal Services to the Poor. So it is not just a matter of cutting back funds and having the Senate save us next year. And, remember, the Senate is losing at least eight moderate members of that body that have in the past protected Civil Legal Services to the Poor with no guarantee that their successors body to vote on this afternoon, and it is a nice little resolution. It shouldn't be very controversial. It doesn't tell you exactly what to do or how to do it, and if you pass it, I guess I will be appreciative.

But if you just pass it and walk out of this group, this meeting here this afternoon, it will mean absolutely nothing. And legal aid programs will probably become so small that we will have to effectuate our decision that we are talking about now to dissolve as corporations. So if you do pass that resolution this afternoon, you need to think about what that resolution means and what you can do. We all know it is not just the bar's problem. We know it is society's problem. But somebody has to start taking some leadership somewhere. And Legal Services programs can't be nice anymore. We can't protect lawyers. We can't protect the judiciary. We can't protect community agencies by trying to be all things to all people. We are going to start turning people away and cutting them off and referring them elsewhere because we have no choice in the matter. And we will do that for as long as we can keep going.

One last piece of information is that the Legal Services programs are looking at seeing if there is any interest in trying to obtain a foundation grant, to do an outside study of Civil Legal Services to the Poor by an outside entity, not by the government, not by the state bar, not just for LAND but for what it might look like if all of these things come to pass in the next year and a half and what can be done and what should be done. That might be something you can think about doing. So my challenge to you is to come up with your own workable plan. Give the term workable plan new meaning, a meaning that all the bar can support, actively support, and give some hope to those people in this state who may be without legal services in the very near future. Thank you.

(APPLAUSE)

PRESIDENT PETERSON: Thank you, Linda. Since 1994 a group of lawyers and judges have volunteered their time and energies to study gender bias in the courts of North Dakota. Last year we were asked to complete an extensive survey about our perception of the existence of

gender bias. The Supreme Court Commission has also conducted public hearings and CLE seminars about the subject throughout the year. Here to provide us with a preview of the Commission's findings is the Chair of the Supreme Court's Commission on Gender Fairness in the Courtroom, Sarah Andrews Herman.

(APPLAUSE)

MS. SARAH ANDREWS HERMAN: I need to begin with just a little bit of history. We began actually the first time in 1987. The Supreme Court at that time appointed a committee to study and assess whether or not we needed to do a gender fairness study in this state.

One of the principal findings of the study that I think resulted in the conclusion that we did need to go forward with the study was the problem of access to the courts which was occurring in some of our rural areas across this state. So it was determined at the end of that study in 1987 that we should go forward and we were funded and we were ready to go in 1988, and then there was a tax referral and the monies were gone and we didn't go forward. Through the efforts of Justice Levine and Justice VandeWalle we were re-appointed and re-established in 1994 and began the process again. There are 25 members on the Commission, and there are a number of you in this room who have served. It has been a lot of work. It has been a lot of learning. We have done a lot of things.

The model for what we have done comes from a plan that was formulated through funding attained through the National Organization of Women Judges. It includes a number of different types of information gathering, town meetings. Task Force members participated in these and we were helped in these town meetings by Jerry who graciously went on the trail, Jerry Davis, Heidi Heitkamp and Mike Alhen. And what that involved was actually going out into the communities advertising, inviting the public in to tell us about any problems that they had had in terms of fairness issues in the court. We also did surveys. I know that many of you completed the survey. Our final percentage return was 67 percent which is amazingly high. I have to grant you that they were long, and I am sure that many of you didn't enjoy filling them out, but the information that we obtained I think is important, and I think it was very important for you all to participate. We were aided to a very large extent in the preparation of the survey and the gathering of that material, the analysis of that material by Wendy Hume, who is a sociologist at the University of North Dakota. She spent hours working on this project and has done wonderful work for us.

We also did considerable training. Sandi Tabor and I developed a little program that we took on the road, and we have discovered if you

offer free CLE for ethics credits, people will come in larger numbers than you would expect, and a lot of you did come, and thank you for doing that. I spent a lot of time in both committees because I have been in the co-chair position on both of these committees, the 1988 one and the 1994 one answering the question why? Why are you doing this? Why are you wasting our money? What is this about? Why? Why are you bothering us with this survey? And I think there is a quote, actually two quotes that are important for us to keep in mind. One comes from Lawrence Cook, Chief Judge of the state of New York who said, "Every reasonable effort should be made to guarantee that the scales of justice are balanced evenly for every person who comes before the courts. They expect no less and certainly are entitled to no less." And Justice VandeWalle in commissioning us to this Task Force wrote, "Decisions made or actions taken based on preconceived notions about the nature, roles and abilities of women and men rather than upon evaluation of each individual's situation strike at the heart of a judicial system that promises fairness and impartiality."

This is an important issue. It is extremely important that in our court systems we do justice, and gender fairness is part of that. We are at the position now where we have gathered the information and we are ready to analyze. And I can give you some preliminary information but it won't be in detail because we aren't done. Our time line is this. We are writing articles, and so far we have been writing by committee, which as you can imagine is an enjoyable sort of thing. It may give some of you comfort because when you think of who is on the Task Force and realize that we are divided into subject matter committees including domestic law, criminal and juvenile law, professional conduct, judicial system demographics and jury services, these are issues that—this is not likely to be an extremely radical report. It will be a truthful report, a thoughtful report. It will be a Law Review article. This fall is our deadline for publication. We expect to have it done in September. We have finished the writing by committee and now it moves to the data collection subcommittee which is Sandi Tabor, Marcia O'Kelly, Pat Durick and me, and we will be doing editing. Hopefully we will have it completed by September.

We have not put together the recommendations. There is lots of guidance on that issue as there is on all of these issues because there are forty states that have done gender fairness studies and there are four circuits that have done gender fairness studies. And in terms of giving you information about what we found out, what we found out is that North Dakota is like most other places, maybe a little better. We didn't find any horrible things. We found some things that need to be fixed,

things that I think that we can fix pretty handily. We found that we need to sensitize a little bit. We have talked about perhaps putting together a booklet. Some courts have put together some booklets that kind of give rules about how people should be addressed and just the kind of basic courtroom etiquette stuff. There were some surprises. Nothing horrible. We have decided as a commission that there is nothing to be gained by pointing fingers, so if that has been a concern we can drop that one. That is not happening.

It is my hope that the report as completed will represent something that will be helpful to us as we go forward in this court system to do justice. The issue is gender here, but it is an equally applicable issue on all other minority groups, all other protected groups, and I think it is a lesson that translates well. The Commission members have worked long and hard and spent many, many hours doing this work. Many of you have participated hours, I suppose, doing the survey. I appreciate that. We are on our way, and this fall the report will come out.

I had some pointed questions from Jim at the Board of Governors meeting as to why haven't you released the survey information? Where is the raw data? We had a concern about that. I think as you can imagine if you take the individually written comments and if you take some of the answers out of context, that may not be the sort of stuff that we would like others to be writing about. It is not because there is anything mysterious or horrible that we haven't sent that data out. It is because we think that it should be written in a proper form and we think the Law Review article is the way to do it. So that is where we are, and this fall you will hear the rest of the story. Thank you.

(APPLAUSE)

PRESIDENT PETERSON: Thank you, Sarah. As we did last year, and in just a moment I am going to ask Sandi Tabor to read the resolutions pursuant to the time frames outlined in the Bylaws. These resolutions will be discussed after we have completed the call for nomination of officers. All of the resolutions that were timely submitted are included in your annual meeting folder. Sandi.

MS. SANDI TABOR: Good afternoon. The first resolution, Resolution No. 1 in your Annual Meeting packet, concerns non-licensed membership fees.

MR. J. PHILIP JOHNSON: Mr. Chairman, I would move that we omit the reading if that is permissible as far as—

MS. TABOR: I think that is a lovely idea.

MR. JAMES HILL: That is up to the parliamentarian.

MS. TABOR: He is the parliamentarian.

MR. HILL: Well, I defer to him.

PRESIDENT PETERSON: You second?

MR. HILL: Absolutely.

PRESIDENT PETERSON: It has been moved by Phil Johnson and seconded by James Hill that we dispense with the reading of the resolutions. Is there any discussion on the motion, first of all? Hearing none, I will entertain—call the question. All in favor of the motion signify by saying “Aye.” “Aye.” Anybody opposed? Motion carried. Thank you very much. Where were you last year? I knew we were paying him this year. At this time the Chair will open the floor for nominations to the office of President-Elect. Are there any—

MR. McLEAN: I have a nomination.

PRESIDENT PETERSON: The chair recognizes Ron McLean.

MR. McLEAN: Mr. President, members of the Bar Association, it is with a great deal of enthusiasm that I stand here to place into nomination Sarah Andrews Herman to be our next President of this Association. But before I visit with you about her qualifications and her experience, I want to tell you a little story about her abilities to handle a rowdy group to see if she can handle our association and the Board of Governors.

Her husband, Doug, is from Springfield, Missouri. And years ago they were on a traveling trip south. And like these things start, there are three boys in the van, and Sarah and Doug are in the front. They are a little bit doing okay and all of a sudden the abuse starts. Matthew starts verbally abusing his four-year-old brother. Matthew is age eight. And you can imagine Sam’s ability to handle the verbal abuse of an eight year-old brother. He couldn’t handle it. He just fused. They go through Watertown, Brookings, Sioux Falls, Sioux City. It just doesn’t stop. Finally Matt falls asleep. Sam’s back in the third row, gets up, sneaks by the seat, gets right in front of his brother, Matthew, who has been abusing him all these miles, a sleeping Matthew, undoes his fly and lets fly. Can there be any doubt that Sarah Andrews Herman can handle any leadership that we give her?

Sarah graduated from the University of North Dakota in 1974 with degrees in French and Art. With that she went to law school. She graduated from the University of Michigan in 1977. She has practiced in Fargo for nearly twenty years. I think we all know what outstanding skills she has as a lawyer. She has clientele that goes from the largest companies in North Dakota to do business here to individuals. She practices general practice. She does railroad work. She does employment work. She has been a frequent speaker at CLEs. And I think we

all know what a highly skilled and highly respected attorney she is. She has been a tireless and enthusiastic worker for our Bar Association and our profession. She has been President of the Women's Lawyers Section. She has been a member of the Judicial Selection Qualifications Committee.

As you heard today, she has been Co-chair and worked long and hard on the Gender Fairness Commission. She has been Chair of the Federal Practice Committee in North Dakota, and she has been the Chair of the CLE Commission. This is the CLE group that doesn't put on the programs but determines that the thing you want to really should get some credit. And she had a partner, and Russ Freeman has an office practice, and he is a good lawyer and a busy lawyer, and he went to London and he went to the ABA meetings, and I am sure there were all kinds of sections there on taxation, limited liability partnerships, agency partnerships, but, no, Russ decides to go to how to defend the international terrorists. He writes out his little certification, sends it into his partner, Sarah Andrews Herman, just certain that she will rubber-stamp how to defend an international terrorist. Well, she denied the request and ironically the same year was the Chair of the Year by this organization.

Well, I have spoken about her professional accomplishments, but—and her public role, but when you deal with Sarah on just even any kind of matter, all you get is the highest quality of lawyering and the highest quality of being a person. I don't care if it is a letter, I don't care if it is a phone conversation, I don't care where it is, every contact you have with this woman just reflects her integrity, skill and decency. I have always greatly admired Sarah as a terrific human being, and it is with great personal pleasure and humility that I place into the nomination of President-Elect Sarah Andrews Herman.

(APPLAUSE)

PRESIDENT PETERSON: Thank you, Ron. Is there a second to Mr. McLean's nomination of Sarah Andrews Herman for position of President-Elect? Chair recognizes Judith Howard.

MS. JUDITH E. HOWARD: Thank you, Mr. President. I would like to second the nomination of Sarah Herman as President-Elect of the State Bar Association. There are certain qualities that we should look for in a President of our State Bar Association. I believe that that person should be someone with ability to lead, someone with communication skills, someone who cares about the association, and someone who demonstrates professionalism and integrity. And that person is Sarah Herman.

I have known Sarah for more than ten years, and I can tell you that she exemplifies every one of those qualities. Sarah is a proven leader in

the bar. She has served on many, many committees of our State Bar Association, and she has chaired a number of them. Sarah has outstanding communication skills. Those skills have been ably demonstrated in her fine trial practice that she has had during her career. Sarah cares deeply about this Association. Sarah has devoted many, many hours to the State Bar Association and many hours of her time in chairing committees. I serve on the Gender Fairness Commission with Sarah. Sarah is Chair of that committee. And I want to tell you that I know firsthand of her dedication and the deep involvement that she has had with that committee and all the hard work that she has put in on it, and that is just one of the committees.

I believe that Sarah exemplifies the best of our profession. I believe that she is a role model for all of us in her professionalism and in her integrity. She is well respected not only by her peers but by the judiciary. And also very importantly, she wants this position. And I know that she will do a good job. It is with a great deal of pleasure and enthusiasm that I nominate my friend, Sarah Herman, as President-Elect of this Association.

(APPLAUSE)

PRESIDENT PETERSON: Thank you, Judith. Are there any other nominations for the position of President-Elect? Are there any other nominations? Are there any other nominations for the office of President-Elect? Hearing none, the Chair will entertain a motion to close nominations.

MR. KERMIT E. BYE: So moved.

PRESIDENT PETERSON: Moved by Kermit Bye. Second?

MR. HILL: Second.

PRESIDENT PETERSON: Seconded by Jim Hill. All in favor of that motion say "Aye." "Aye." Opposed? Motion carried. And since we have only one person nominated for the office, I will entertain a motion to suspend the rules and elect Sarah Andrews Herman by unanimous acclamation to the office of President-Elect.

JUDGE RALPH R. ERICKSON: So moved.

PRESIDENT PETERSON: By Judge Erickson. Second?

MS. CHRISTINE A. HOGAN: Second.

PRESIDENT PETERSON: Christine Hogan. Thank you. All in favor—any discussion on the motion? Hearing none, all in favor of the motion signify by saying "Aye." "Aye." Opposed? Congratulations, Sarah. Next item is—it is really—it is really very strange. Jim Hill has done a lot and been involved in a lot of organizations. On my agenda it says we are now going to elect a Secretary-Treasurer but, Jim, we already got one.

MR. HILL: It is just my luck.

PRESIDENT PETERSON: Chair will now open to direct the nomination of position of ABA, American Bar Association, Delegate. Are there any nominations? The Chair recognizes Kermit Bye.

MR. BYE: Thank you, Don. I am going to place the name of Jim Hill as the nominee for the State Bar Delegate to the American Bar Association. When Jim asked me to do this I said I need to know a little bit about you, Jim. I have only known you for about thirty years. And he sent me five pages. Now, I am not going to go through all these five pages, but I whittled this down to one page and due to lateness of the hour, I think we will even cut that in about half. Sandi Tabor sent me a very stern two-line letter saying keep it to five minutes. I think I can do it in less than that. Seriously, this is a really important post.

I have been in the House of Delegates for a number of years. I have served with Jim there. When he first came to the ABA House of Delegates I wasn't sure that Jim was really cut out for this reason. It is a very deliberative body. I mean, as Phil Johnson knows, they deliberate matters endlessly. They have more liberal rules than the Senate of the United States does as it relates to debate. But as I worked with Jim he has learned to contain himself, and he has gotten really involved in the flow of the important matters that go on in the official deliberative body of the bar of this country and he has really done an excellent job. And he truly does deserve another term. He has served two, and he could be entitled to another two. Jim has been there and he has done that. He has served in numerous capacities in this Association, and I am really proud and very pleased to recommend to all of you to place in nomination the name of Jim Hill for the State Bar Delegate for the American Bar Association. Thank you.

(APPLAUSE)

PRESIDENT PETERSON: Thank you, Kermit. Is there a second to Mr. Bye's nomination of Jim Hill for the position of State Delegate?

MR. DANIEL S. KUNTZ: Mr. Chairman.

PRESIDENT PETERSON: Chair recognizes Dan Kuntz.

MR. KUNTZ: I also, like Kermit, had a longer version of this nomination, or two versions of this nomination speech, one which detailed all the great qualities of Jim as a partner and I have seen the dedication he has given to the Bar Association and all the other reasons why you would want to re-elect him as ABA Delegate. Then I had a shorter version, and I did a survey last night, and with the exception of Jim, everybody thought I should give the shorter version. So based on the survey and lateness of the hour, it is my honor to second the nomination of James Hill as ABA Delegate to the Association. Thank you.

(APPLAUSE)

PRESIDENT PETERSON: Thanks, Dan. Are there any other nominations for the position of State Delegate to the ABA? Are there any other nominations? Are there any other nominations?

MR. BYE: I would move nominations cease.

PRESIDENT PETERSON: Thank you. Second?

DEAN W. JEREMY DAVIS: Second.

PRESIDENT PETERSON: Seconded by Dean Davis. All in favor of—I will also now entertain a motion to suspend the rules and elect Jim Hill by unanimous acclamation to the office of State Representative to the American Bar Association.

MR. J. PHILIP JOHNSON: Mr. Chairman, do you want to vote on the first one?

PRESIDENT PETERSON: Oh, didn't we vote on first one? Can we vote on the first one?

JUDGE ERICKSON: No, but I can offer an amendment.

MR. JOHNSON: I think he is out of order.

PRESIDENT PETERSON: I agree. We need to vote on the motion to suspend.

JUDGE ERICKSON: I think you can offer one motion with the chair of the second—with permission of the second and moving party there be one motion, that the nominations cease and that a unanimous ballot be cast.

MR. JOHNSON: I think he is out of order.

JUDGE ERICKSON: I'll remember that.

PRESIDENT PETERSON: We have a judge, and we have—. All in favor of the nominations being closed signify by saying "Aye," please. "Aye." Opposed? Motion carried. Now, is there a motion to suspend the rules and elect Mr. Hill by unanimous acclamation? Chair recognizes Judge Erickson.

JUDGE ERICKSON: So moved.

PRESIDENT PETERSON: Thank you.

MS. CAROL RONNING KAPSNER: Second.

PRESIDENT PETERSON: Carol Kapsner. All in favor of the motion, signify by saying "Aye." "Aye." Opposed? Congratulations, Jim. (APPLAUSE)

We will now act on the resolutions starting with Resolution No. 1 which is, as I said, in your binder. Resolution No. 1 proposes to amend the constitution by allowing the Board of Governors to set the membership fee for non-licensed members. The Board of Governors has endorsed this resolution because we feel that the present \$200 fee is simply too high. The proposed amendment will allow the Board to

reduce that fee, and we hope by doing so it will encourage retiring attorneys to stay active in the organization. Basically what happens is if they pay \$200 they get a copy of the Gavel, and that Gavel is probably not—while it is a good one, it probably is not worth \$200. Do I hear a motion to adopt the resolution?

DEAN DAVIS: Mr. Chairman, I so move.

PRESIDENT PETERSON: Moved by Dean Davis. Is there a second?

MR. MICHAEL F. DALEY: Mike Daley, Grand Forks, second.

PRESIDENT PETERSON: Thank you. Is there any discussion concerning the motion? Is there any discussion concerning the motion? Hearing none, does anyone call the question? I didn't hear. Question has been called. Okay. All in favor of the motion to adopt Resolution No. 1, would you please signify by saying "Aye"? "Aye." All opposed? Motion is carried. Next I will now accept a motion regarding Resolution No. 2 which proposes to amend the constitution by allowing absentee ballots for the election of officers. Do I—is there such a motion?

MR. ROGER R. SUNDLING: So moved.

PRESIDENT PETERSON: Moved by Mr. Roger Sundling.

PRESIDENT PETERSON: Is there a second?

MR. DAVID R. BOSSART: Second.

PRESIDENT PETERSON: Seconded by—ah, ah, ah. I know Dave very well. I just have to do this because I paid him so much money in that one case.

MR. BOSSART: David Bossart. Thank you again. David Bossart.

PRESIDENT PETERSON: It is hard to get his name out even. Having heard the second, I recognize Roger Sundling to explain the motion.

MR. SUNDLING: This is a motion to allow absentee balloting. We believe it is the only fair way that all members of the bar will have the opportunity to participate fully in bar matters. We are permitted to vote for Governor of North Dakota by absentee ballot, we can vote for President of the United States by absentee ballot, but we can't vote for the officers of our organization or vote on resolutions, even this resolution.

Since this resolution was first described in the Gavel I have received a number of phone calls and letters from members who can't be here today who are in support of the resolution. Some of them came up with some very creative suggestions. They sent me proxies. They sent me powers of attorney. But under current rules it doesn't do any good.

The bottom line is that there are—as pointed out by the Chair, there are a large number of attorneys in this state who have their opinions, they want to be heard, but their voices aren't going to be heard today. By passing this resolution they can be heard in the future. Thank you.

PRESIDENT PETERSON: Thank you, Roger. Is there any other discussion concerning the resolution? Any other discussion? Chair recognizes—

MR. GORDON W. SCHNELL: Gordon Schnell from Dickinson. My concern with the resolution is not at all related to the matter of voting by the people who cannot make it to the Annual Meeting. I have sympathy for that, and for that reason I would be in favor of the resolution.

The problem I have is the status of the Annual Meeting itself. I am afraid that is one more small step backwards from what we used to have as a great Annual Meeting. And for that reason I am opposed to the resolution. I think our Annual Meeting is so important, so necessary and fundamental that we as a Bar Association should try to get together in a social or non-combative manner whenever possible. And this is the one opportunity we have always had, and this has always been a good thing. But it is becoming more and more difficult in recent years to hold a good Annual Meeting. I don't know what the remedy is for sure. Some people suggest we do like South Dakota where the Annual Meeting is included in the dues and they have 8 to 900 people at their Annual Meetings. And I think that would be great. But—and if we did that, I would be in favor of an absentee ballot. But the way it stands right now I just hate to do anything that takes away from the strength and vibrancy of our Annual Meetings, and that is just one small thing. So I am opposed. Thank you.

PRESIDENT PETERSON: Thank you. Chair recognizes Jack McDonald.

MR. JACK McDONALD, JR.: Jack McDonald from Bismarck. I would just like to make a brief comment against the resolution. First of all, certainly the voices won't be heard because they won't be here. They will be mailing things in. So it is not going to make any difference on voices being heard, but I think this is a little different type of an election than when you are electing a President or a Governor. This is more of a deliberative debate type of situation, much more akin to a legislature process. You want to hear the pros and cons and you want to hear the people speak for and against a measure and then make your decision based on that. If you have a mail-in ballot you have none of that debate. You have it on a given page. You have to be on the floor of the Legislature to cast a vote for a Legislator. You have to be on the

floor of the Senate to cast your vote in the Senate. I think you should have to be here to cast your vote and make decisions, if such exist. There are places for absentee ballots in general elections. I don't think this can be equated to that. So I would oppose the resolution.

PRESIDENT PETERSON: Chair recognizes Dave Bossart.

MR. BOSSART: Dave Bossart from Fargo. I talked to Roger sometime ago about this particular resolution. And initially when I thought about it I was opposed to it and for the reasons that my fellow classmate Gordy Schnell said just a few minutes ago. I think, however, the problem is that the attendance at meetings is not getting better, and people do not have the right to vote by ballot. So if it were the fact that you had to come to the Annual Meeting that would draw you here to vote, I would think our attendance would not be dwindling. It would be the same or it would be increasing. And I hope that as an Association, as an integrated Bar Association, we can do more than just say you have to come here to vote in order to come to the meeting.

I think the lack of attendance, if you will, at the State Bar Association meetings stems from what is happening in the country with lawyer bashing and everything else. At a time when we need to be together, at a time when we should be affirming each other, these meetings should be well attended. At the same time I do believe we have an Association of 1400 members, and I don't know how many are in this room, and now we are at again the late hour, quote, unquote, debating serious resolutions. I don't know how many people are out there that would like to be here but can't be for legitimate reasons. I would suspect they are—I would suspect there are people. And I would just say that I am one of these people that it is not change that is the problem in our lives, it is our resistance to change. And I would be interested in and I would ask your support this resolution not just because it is my idea, it is not, but I think what would happen if we changed this constitution to allow this just for one year or two years, and I don't even know if that is Roger's intent, but I wonder what would happen. Would we stimulate interest in this organization by people so that they would come? I don't know. But I do know this. I do know that the attendance is down. It has been continually going down, I think. I am not an expert on that. I myself have not been the greatest attendor of the State Bar Association meetings, as everyone knows, but I don't think it would harm us to try it and see if, in fact, it will do something to stimulate interest by people having to think about the resolution who aren't here and send in their vote, or whatever. So I would urge our group to see what happens and support this resolution. Thank you.

PRESIDENT PETERSON: Chair recognizes Jim Hill.

MR. HILL: I would urge—Mr. President, I would urge that this resolution be defeated. A few years ago when we had the postal ballot on the pro bono vote I was a committed person at that time to that concept, and I have had a lot of time to look at it. I knew the repercussions at that time, but there is a price to pay for the privileges that we have.

We are in a day and age where we are doing e-mail. We are doing facsimiles. No one thinks anymore. Nobody talks anymore. You are asked to make decisions before the e-mail is even here. This is the one time when we get together and we decide the direction and tone of our administration, our association, and we finally look face to face. And if it is looking in Jack Marcil's face at a golf course finding out what is going on here, that is important and it is important for everyone here. I am seeing familiar faces that have gone before me. I see a lot of new faces that are coming behind me.

When we get 350 or 400 people coming to these meetings it is significant because we are talking about 1400 people and we are talking less than a thousand right here in North Dakota. I think that with an Association our size it is little to ask for us to meet and decide the important things that have to face us. And it is as important as choosing Sarah Andrews as our leader going into next year and Becky Thiem to lead us this year. It is important for us to be here. I don't think you can debate when you are not here in person. I don't think you can share ideas when you are not here in person. I think to have twenty ballots go to our firm when five or six of us are here and there is fourteen that are not here, pretty easy for me to go get the other fourteen people to vote for me. I don't think that is what we intended. I think the intent was to bring the people that are consistently here to share the ideas. I think all of us that are here are bringing ideas from our classmates, from the people that we work with, from our delegations, and I think that is what it is here for.

The postal concept, it is costly. It is in some respects somewhat unmanageable. But it is really impersonal, and I think it is really a step back in making this organization more active in the body, politic of law. If we are going to try to reverse this trend of lawyer bashing, I think we start by getting together, sharing with the judiciary who are standing with us. They reversed trend. That maybe was ten or fifteen years ago the judicial conference has been meeting identically with our Association. We have done more in the last ten years in the Association between the judiciary and the bar than I think at any time in the twenty-three years that we have been out. I would urge you to vote no. I would urge you

to take a look at it as not just an opportunity but a responsibility that we have with this privilege of the practice of law. Thank you.

PRESIDENT PETERSON: Any other discussion on the motion?

MS. LESLIE JOHNSON-ALDRICH: Leslie Johnson-Aldrich, Fargo. I'll admit that I don't make it every year, but I am a solo practitioner now starting a firm and I can't be here every year. I can't take out four days or five days from my practice to come here. And I look who is here. It is the larger firms that are here. It is not solo practitioners. So if we are trying to reach to create a larger atmosphere for our bar it is because we are losing our solo practitioners. And when I look at different meetings who are here, yeah, there is nine people from the big firms and there is three people from the medium size firms, but a lot of the solo practitioners are not here and can't afford to be here or have other obligations because they don't have office managers and accountants in-house who are running their practice. We run our practices and quite successfully. We are here and we are in business and we serve our clients. But we also pay our dues. And part of those dues, I think, should be an input into who our officers are and what the resolutions are. So I would urge you to support this and vote for this resolution.

PRESIDENT PETERSON: Further discussion on the motion? Identify yourself.

MR. HENRY H. HOWE: Henry Howe of Grand Forks. I think we need to make the Bar Association as inclusive as possible. There probably are a hundred people here, and I am not sure that that's the way we should limit ourselves. We all have to pay our dues. There are lots of people who can't attend. I think we should pass this resolution and have this option for people who just can't come.

PRESIDENT PETERSON: Any further discussion?

MR. GREGORY L. LANGE: I am Greg Lange. I am from a firm in Hazen, and this is my first meeting that I have attended. And the results of not attending have meant a certain lack of interest in what the bar is doing, and I find my attendance here which was brought about more because of the CLE, I am trying to choose computers and I thought here is where I could learn something instead of paying somebody 20 to 200 bucks an hour to tell me about it, here I could find out something for the price of admission at the CLE, and I have learned a lot. And being involved in this meeting has made me more interested in the bar activities, but I think that if I was able to vote on these things over the past eighteen years that I have been an attorney I would have been keeping track of these issues and been more interested in and involved as a result of it.

I took my eighteen-year-old son to the election booth for the first time just this week, and in the week leading up to this election he has been asking me a lot of questions about these issues. He has been taking an interest in things like Workers Comp Reform which he would have no interest in whatsoever if it were not for the fact that he had a right to vote. And the fact that you have to be here means a lot of people don't vote obviously and don't take an interest as a result of that. And I think if we want to get more people involved it has to be all the time, not just once a year.

If they are involved on a regular basis in every issue that comes up, I think they are going to be more interested and more likely to come to these things. I personally have enjoyed the time here and I think if they are taking more of an interest, those are the people like me who will be here more often, and I would urge a positive and affirmative vote on the resolution.

PRESIDENT PETERSON: Is there any further discussion? Because of the nature of the motion I am going to ask that the election proctors come forward and we do a paper ballot on this issue. For clarification purposes, a yes vote will mean you are in favor of the resolution and a no vote will mean you do not favor the resolution, and that's Resolution No. 2.

(OFF THE RECORD.)

PRESIDENT PETERSON: While we are gathering ballots and counting them, I would like to now accept a motion regarding Resolution No. 3 which Ms. Catalano referred to which calls for this Association to support the cause of Legal Services in North Dakota. Do I hear such a motion?

MR. BOSSART: So move.

PRESIDENT PETERSON: Moved by Dave Bossart. Second?

MR. HAROLD J. BERGQUIST: Second. Harold Bergquist.

PRESIDENT PETERSON: Any discussion regarding this motion? Any further discussion on the motion? Chair recognizes—state your name.

MR. RICK D. JOHNSON: Rick Johnson, Fargo. I have just one concern about the motion, and that is the second to the last paragraph, the words "if at all fiscally feasible" to me seemed to water down the motion to the point I am not sure how effective that is. I mean if this is going to be read or put into the Senate or in the Congress, it seems to me that is implied in everything that goes to Congress, and I would think I would have a question as to exactly the message we were sending. I would like to therefore move to amend in the second to the last paragraph to delete the words "if at all fiscally feasible."

PRESIDENT PETERSON: Is there a second to the amendment?

MR. HILL: Second.

PRESIDENT PETERSON: Seconded by Jim Hill. So I call a question on the amendment. All in favor of the amendment which would delete the words "if at all fiscally feasible" in the resolution signify by saying "Aye." "Aye." Opposed? Amendment is—is there a motion for the—have we had that already? I am getting mixed up. Is there further discussion on the motion now as amended?

MR. BOSSART: Call the question.

PRESIDENT PETERSON: Question has been called. All in favor of the amended motion signify by saying "Aye." "Aye." Opposed? Motion carried. We have—there are three additional resolutions in your binder, and these resolutions extend the Association's appreciation to the many people who help make this meeting possible. At this time I would entertain a motion to suspend the rules and vote on the adoption of all three resolutions.

MR. McDONALD: So moved.

PRESIDENT PETERSON: Moved by Jack McDonald.

MR. ALBERT A. WOLF: Second.

PRESIDENT PETERSON: Seconded by Mr. Wolf. Thank you. Any discussion on the motion? All in favor signify by saying "Aye." "Aye." Opposed? Motion carried. Thank you. At this time the Chair recognizes Connie Triplett for an announcement.

MS. CONSTANCE L. TRIPLETT: Thank you, Mr. President. I have served for the last year as the President of the Women's Section of the Bar Association, and we have taken it as one of our projects for the year to nominate the Honorable Justice Beryl Levine for the ABA's Margaret Brent Outstanding Women in the Profession Achievement Award. It is an award which we nominated a winner this year, and we are very proud of the fact that Justice Levine has been honored in this way along with four other women. She will be receiving the award at the ABA Annual Meeting in Orlando, Florida, on August 4th, 1996. The Board of Governors has reserved a table of ten for that meeting, and the Women Lawyers Section has reserved a table of ten, and we are here to tell you today that we have about five spaces left at our table.

If there are any of you who plan to be in Orlando on August 4th and would care to go to that luncheon, please talk to Sandi Tabor here today or tomorrow or else contact Brenda at the State Bar Association Office sometime before the end of June, I would say, and we would be happy to make those arrangements with you. We sponsored a table partly in effort to have our name in the program because we wanted

them to be aware that we did this and are pleased by the results and partly because we wanted to make space available for everybody who wanted to attend. Thank you.

(APPLAUSE)

PRESIDENT PETERSON: I should tell you, I guess, the silent auction that Jack referred to is in the Great Hall, and that will start at 6:30, so I encourage everyone to come to that.

MR. BOSSART: Mr. President, while we are waiting, I frankly was moved this afternoon when I listened to the fact that Linda Catalano has been involved in Legal Services of North Dakota for twenty years. I think that is an incredible accomplishment. I think it is a statement of what lawyers, what the sacrifice is that many lawyers make, and I just feel compelled to recognize that and ask that our Association recognize that. And Linda is not done. I understand that. But I think that we need to come awake, if you want to say that, with regard to the bill. There are some of us that know people in the media. If you know people, tell them about this. I know one. Linda, get ready. I hope they call you, and if they don't, call me. But I really want to say on the record for our Association that this woman deserves our Applause, our acclamation and our appreciation. And I think we should thank her for it.

(APPLAUSE)

MS. CATALANO: Thank you very much, Dave. It is very unexpected and very much appreciated.

PRESIDENT PETERSON: For purposes of information, the constitution of this organization requires to amend the constitution a two-thirds majority is required of those vote. However, that is not even—we don't get to that issue since the yes votes in this were 44 and the votes to defeat the motion were 48 with one blank. So the motion fails. Is there any other business that anyone wants to bring to the attention of the Chair? There being no further business on the agenda, it gives me great pleasure and satisfaction to turn the gavel over to your new President, Becky Thiem.

(APPLAUSE)

PRESIDENT-ELECT THIEM: Thank you. That was very nice. Just wait to see what I do with all this power. I am telling my partners finally I'll have some power in the office. Any other business? If not, we will adjourn the meeting and see you all tonight.

(The 1996 Annual Meeting of the State Bar Association of North Dakota concluded at 5:35 p.m.)

APPENDIX A - RESOLUTIONS

RESOLUTION #1 Non-licensed Membership Fees

WHEREAS, non-licensed attorneys may be members of the Association by paying an annual membership fee equal to 80% of the fee for an annual license to practice law in North Dakota, and

WHEREAS, the Board of Governors determined the cost of non-licensed membership to be too high, and

WHEREAS, at its May 20, 1995 meeting, the Board of Governors voted unanimously to support an amendment to Article 3 of the Association's Constitution allowing the Board of Governors to set the non-licensed membership fee.

NOW THEREFORE, BE IT RESOLVED, that Paragraph 3.1 of Article 3 of the Constitution of the State Bar Association of North Dakota be amended to read as follows: 3.1 The membership of the Association consists of every person who has secured a current annual license to practice law in this state from the State Bar Board, or who has an unrevoked certificate of admission to the Bar of the state of North Dakota and who has paid to the Association an annual membership fee as established by the Board of Governors. Members who are suspended or disbarred are thereby suspended as members of the Association during the continuance of such suspension or disbarment.

RESOLUTION #2 Absentee Ballot

WHEREAS, on July 31, 1995, the Association received a petition to amend Article 4 of the Constitution of the State Bar Association of North Dakota, and

WHEREAS, said petition would permit any member to vote in any election conducted by the State Bar Association of North Dakota by absentee (mail) ballot.

NOW THEREFORE, BE IT RESOLVED, that the Constitution of the State Bar Association of North Dakota be amended by adding the following paragraph to Article 4 of the Constitution; 4.7 Any member may vote in any election conducted by the SBAND by absentee (mail) ballot. The Board of Governors shall develop and oversee the mail-balloting procedure.

NOR

RESOLUTION #3

WHEREAS, North Dakota is a large state geographically with a low-income population composed of a substantial number of rural, elderly, children, Native Americans and working poor, and

WHEREAS, the North Dakota State Bar Association has a long history of supporting equal access to justice for all citizens, not only those who can afford legal services, and

WHEREAS, the private Bar in North Dakota cannot alone provide meaningful legal services to the poor, and

WHEREAS, federal funding to the Legal Services Corporation was reduced 33 percent in federal fiscal year 1996 from the amount appropriated in federal fiscal year 1995, and an additional cut is contained in the recently passed FY 1997 Congressional budget resolution which would result in the Legal Services Corporation being funded at 1/3 of its 1995 level, and

WHEREAS, numerous restrictions and modifications to the Legal Services Corporation Act were appended to the appropriation as riders, and

WHEREAS, Legal Services Corporation funded legal aid providers in North Dakota received an equivalent in federal funding as well as increased bureaucratic paperwork which detracts from the direct delivery of legal services to the poor, and

WHEREAS, these cutbacks resulted in a reduction in legal aid attorney and paralegal staff positions throughout North Dakota resulting in one attorney offices, and

WHEREAS, the persons most seriously affected by the significant cut in legal services funding are those persons whose safety or lives may be threatened from violence, lack of food, shelter, clothing or medical care or particularly those who are isolated by virtue of living in a sparsely populated rural state with extreme climatic conditions; and

NOW, THEREFORE BE IT RESOLVED that the State Bar Association of North Dakota not only opposes any additional decrease in funding for the Legal Services Corporation, but urges a restoration of funding if at all fiscally feasible, and urges the North Dakota congressional delegation to voice and vote the spirit of this resolution on the floor of Congress, and

BE IT FURTHER RESOLVED, that the State Bar Association through its Board of Governors establish an effective and proactive mechanism for addressing the needs of disadvantaged citizens harmed or in danger of being harmed by these cutbacks through close work with its committees, including state legislative initiatives as needed.

RESOLUTION #4

WHEREAS, members of the East Central Judicial District and others have put considerable time and efforts into planning and organizing the 1996 Annual Meeting of the State Bar Association of North Dakota, and;

WHEREAS, those persons deserve special thanks for their efforts,

NOW THEREFORE, BE IT RESOLVED, that the State Bar Association of North Dakota extends a special thank you to those persons involved in the planning and organization of this Annual Meeting, particularly:

To: Chair John Irby, and committee members Anna Frissell and Roger Minch for the planning and overall coordination of a multitude of details;

To: Maureen Holman for chairing the Golf Tournament;

To: Nick Vogel for chairing the Tennis Tournament;

To: Mike Williams for chairing the Family Fun Run/Walk;

To: Hilda Twitchell and JoAnn Johnson for arranging and to the following law firms for sponsoring the North Dakota Bar Foundation silent auction: Conmy, Bossart, Feste, Hubbard & Corwin; Dorsey & Whitney; Grinnell, Klinger, Swenson & Guy; Maring Law Office; Nilles, Hansen & Davies; Serkland, Lundberg, Erickson, Marcil & McLean; Vogel, Brantner, Kelly, Knutson, Weir & Bye; Wold Johnson.

To: The Fargo/Moorhead Legal Secretaries Association for their generous assistance during registration; and

To: The Meadows Golf Course, Courts Plus Fitness Center, and the Holiday Inn for their hospitality and assistance in arranging all these events.

RESOLUTION #5

WHEREAS, the businesses and organizations that graciously sponsored portions of the 1996 Annual Meeting and participated as exhibitors are:

Anne Carlsen Center for Children

American Arbitration Association

Attorneys Liability Protection Society

Attorneys' Title Guaranty Fund, Inc.

Benefit Specialists

Blue Cross Blue Shield of North Dakota

Caring Program for Children

Cellular One

Clark Boardman Callaghan

Doug Ketcham & Associates, Inc.

Eide Helmeke, PLLP

Emineth & Associates Court Reporters

First Trust North Dakota

Medical-Legal Consulting Company

The Michie Company

Nelson Court Reporting Service

Norman E. Mark - Court Reporter Service

ND Association of Legal Secretaries, Fargo Chapter

Ramsey National Bank & Trust Company

Software Solutions, Ltd.

Thormodsgard Law Library

United Printing, Inc.
Vaaler Insurance
West Publishing

WHEREAS, without their participation and financial support the 1996 Annual Meeting of the State Bar Association of North Dakota would not have been the success that it was.

BE IT FURTHER RESOLVED, that the above be thanked for their gracious support.

RESOLUTION # 6

WHEREAS, President Don Peterson and Mary Beth Peterson have served the State Bar Association of North Dakota during the past year at a great personal sacrifice to themselves and their family; and

WHEREAS, the State Bar Association of North Dakota has been greatly improved and enriched due to their efforts.

NOW THEREFORE BE IT RESOLVED, that the State Bar Association of North Dakota commend President Don Peterson and Mary Beth Peterson for their dedicated efforts.

APPENDIX B

KERMIT EDWARD BYE ACCEPTANCE REMARKS UPON RECEIVING THE SBAND DISTINGUISHED SERVICE AWARD
Kermit Edward Bye of Fargo, North Dakota, was selected and did receive the State Bar Association's highest legal honor, the Distinguished Service Award at the 1996 Annual Meeting banquet on Thursday evening, June 13, 1996. Bye became the 13th recipient of this award in the history of SBAND. It was made by SBAND's Board of Governors to Bye for his life-long service to the bench, bar and the people of North Dakota. Upon receiving the Distinguished Service Award from State Bar President Donald Peterson of Minot, Bye, in his acceptance of it, made the following presentation to the banquet audience in the Great Hall of the Fargo Holiday Inn:

Thank you, Mr. President, for that wonderful introduction and retrospective. As I heard Don recite the list of some of the activities I have been associated with during my career as a lawyer in North Dakota spanning the period of the last 34 years, many of those disclosures by him brought back fond memories of annual meetings past, and my service to our beloved Association, the oldest integrated bar association in the United States. I am gratified by the large turnout for this Annual Meeting banquet, and I think it's a strong indication that the organized bar is maintaining its position of significance and relevancy in the lives of our members, and I am hopeful that this trend will continue as the organized bar continues to meet the new challenges that lie ahead, while

striving to provide quality legal services at a reasonable cost to all who are in need irrespective of their station in life.

As we all know, lawyers and our entire system of justice, not only here in North Dakota but across America, are under serious attack more so now than ever before. Whether criticism comes from inside the beltway of Washington, D.C., or the Freeman's Compound in Justice Township, Montana, it is important to us to unite, as we never have before, in creating an environment whereby the public is given an opportunity to better understand the work that we do, the needs for advocacy in a free society, and the protection of freedoms that we as a profession can and do provide every day, consistently, mostly without fanfare or in the glare of the lights created by the ten-second sound bite on the evening news. The best possible way for us to present our strong and compelling case is through organized bar association work. In order to achieve a better understanding about the law and the important role of lawyers in it, we as an organized bar must never cease searching for and creating relevant, interesting, and meaningful programs and projects, not only for our members, but for the public as well. We need to develop a heightened interest in organized bar activities among the members of our profession, and do it in a way where we reach and include all lawyers, particularly the younger lawyers who perhaps for a variety of reasons have not previously found organized bar work to be particularly high on their list of life's priorities.

As I've been privileged to travel about the country in a variety of capacities during my legal career, I can say without question that we here in North Dakota can be most proud of our accomplishments, the strong organization we have developed, and the cutting-edge programs that we have developed and supported, whether it be in the legislative halls, in our schools, civic activities, or in our everyday lives. Simply stated, I have concluded from examining the work and programs of other bar associations across the country that we here in North Dakota have nothing to be negative about, we do not have to suffer from any complex of inferiority and our mission for the future should be that we continue a strong and active role in bar leadership, as well as in all other facets of our daily lives, and remain strong and committed to public service for the greater benefit of all of our citizens.

I next want to touch on a subject that I believe is and should become increasingly more important in our professional lives, and that is the concept of professionalism.

Re-Thinking Professionalism: During the past few years "professionalism" or lack thereof has come to the forefront and is on the minds of lawyers, not only here in North Dakota, but across the country as well.

"Professionalism" is now the accepted allusion to the bar's ambitious struggle to reverse a troubling decline in the esteem in which lawyers are held—not only by the public, but also by lawyers themselves. Being a lawyer, particularly one engaged in the private practice of law, seems suddenly an embarrassment for some among us rather than a source of pride. Bar members are usually reminded by their leaders that, as a group, lawyers really aren't as bad as people seem to think, but they are admonished nevertheless that the profession is threatened by a decline in common decency, attitudes, and standards. This confused message has led to little progress in reversing whatever negative trends lawyers perceive within the practice of law.

The legal profession's quandary can best perhaps be summarized as follows: Lawyers have sought a cure for a disease before agreeing on its nature, symptoms and causes. We want to be happy in our professional lives without investigating seriously why many among us are unhappy. We want, in short, to moralize without examining our morals. Explaining this superficiality, however, is more difficult. Perhaps we are afraid of what we will find if we turn over the rock of lawyering and examine what lurks beneath. Or perhaps the problem is not with what we do as lawyers, but with our understanding of "professionalism."

It is my belief that the concept of professionalism has been confused and disjointed because of the changing demands society has placed on the legal system over the past several years. A proper evaluation requires patience. It demands, for example, that we begin with fundamental points like, among others, the contrast between the profession's past and its present, and the changing demands society has placed on the legal system over the past several years. Once we have established a better foundation, the true substance of legal professionalism—the values that make this nebulous concept worth of our attention—becomes much easier to identify.

As everyone here knows, both the organized bar and the nature of practicing law have changed radically over the last decade. A quick review of the organized bar's history emphasizes several critical developments, including the growing moral diversity within the bar's membership, the increasing control clients exercise over lawyers' conduct, and the new demands on lawyering caused by a heightened "rights consciousness" among the general public.

The Bar's quandary as it struggles to re-invigorate a sense of legal professionalism stems from two basic problems. The first is simply that we do not appreciate adequately the lofty goal we have set for ourselves—that is, determining what professionalism must entail if it is to have any real meaning in lawyers' lives. The second problem is that we

do not understand why the idea of professionalism is so elusive for us. If other professions can readily point with pride to a set of shared and lasting values, why do we have so much trouble doing so?

Recent attempts to define the demands of legal professionalism have often been unsatisfactory because they reflect one of two extremes. One reduces professionalism to the level of professional etiquette—pleasantness, returning telephone calls, and the like—so that it appears to lack any real moral content at all. The other vehemently gives professionalism moral content, but reduces it to a single, politically biased value—helping the poor. Although both these approaches contain some truth, they are far too limited to be the basis for a sustained analysis of our professional heritage.

Elements of Professionalism: Six Values Professionalism, troubling as it is to pin down, does have content that should be meaningful to all practicing lawyers. This substance is not simple or single-dimensional, however, in a way that would help generate easy answers to controversial practice problems. Instead, legal professionalism is a concept as complex as the function of the law itself in our society.

The essence of professionalism, I believe, is composed of six interrelated values. These values are individually necessary and jointly sufficient to define the concept. That is, although each of these values is itself important to professionalism, one alone is the key principal at stake. All six must be combined together and given their proper weights to form the full meaning of the term. Blending them reveals, at a minimum, that professionalism is quite consistent with the hard work and the long hours of any law practice, whether it be private or public.

An Ethic of Excellence:

Perhaps most central of all to professionalism is a dedication to excellence in the service rendered to a client. Little else matters if the job performed is second rate or the client's interests have not been thoroughly considered.

This ethic is a "personal" one in that it applies to all lawyers individually, regardless of the nature or details of their employment. But it is also a value that extends to groups of lawyers as well who are bound together professionally in private law firms, corporate legal departments, or public agencies of any kind or type. Within these entities, this aspect of professionalism means a responsibility of the group to create internally an "environment" of excellence.

An Ethic of Integrity: A Responsibility to Say "No"

at some point the excellence of a lawyer's service to a client necessarily entails delivering advice that the client would rather not hear. As painful and economically dangerous as this may be in the short run,

professionalism demands a recognition of the long-range good produced by forthright acknowledgment of the limits of the law.

This does not mean that lawyers have a responsibility to turn their backs on their clients and their interests in favor of some higher "good"; instead, it means more subtly that a professional attitude will help a lawyer bring the client's interests and the interests of the legal system closer together so that one need not be sacrificed so harshly to the other. But in certain instances, tough choices will be necessary: providing excellent service to a client does not include being the client's slave. Part of the service for which the client pays, and part of the concept of professionalism, is the value of professional independence.

A Respect for the System and Rule of Law: A Responsibility to Say "Why"

This is the direct extension of the ethic of integrity: If we must sometimes say "no," we must also be able to say "why." We must believe that there is in fact some "long-range good" to which we can refer to justify our activities generally. That good is the basic integrity of our system of law. Part of our responsibility as legal professionals must be to work to maintain the law's ability to structure relationships appropriately and efficiently, and to resolve disputes fairly and as harmoniously as circumstances and litigants will allow. We must recognize that the social usefulness of the law, and in turn the esteem in which lawyers are held, depends ultimately on the respect the law receives from non-lawyers. And only with that understanding will others accept that the professional independence of lawyers is necessary to the adequate functioning of the legal system.

A Respect for Other Lawyers and Their Work:

Based on the first three values that I have discussed, we can now see that civility within the profession is not entirely a trivial matter. It is important that we respect the law's practitioners. This means not only that lawyers should treat each other with a certain courteousness in order to permit the legal system to function without unnecessary interference, but in addition, it means that lawyers have a particular responsibility in conversations with their clients to avoid holding judges and lawyers in disrepute. The public's respect of the law will often be closely related to its respect at a personal level for those who practice it, and lawyers should therefore acknowledge a special constraint not to undercut the subtle element within the rule of law.

The limits imposed by civility will always be vague and somewhat controversial, but they will also always remain relevant to professionalism: Our respect for each other will inevitably continue to have an impact on the functioning of the legal system.

A Commitment to Accountability:

This value of respect within professionalism requires lawyers to recognize that their clients are entitled to understand the services that the lawyer renders, and moreover, to have the sense that the fees charged for those services are fair and reasonable. This accountability is the cornerstone of the professional independence lawyers enjoy: People generally accept the idea that lawyers need independence in order to provide their full value to society, but the public will continue to believe this only if lawyers respect the reciprocal social demand that they be accountable for their services.

A Responsibility for Adequate Distribution of Legal Services:

The final value that should be included within the essence of professionalism is a lawyer's special responsibility to assist in the effort to distribute legal services widely in our society. This moral duty, like the others I have discussed, follows from the importance of law to our culture. Because law pervades all significant social arrangements and institutions, legal services must be widely available to the citizenry, and the legal system should be functioning adequately on their behalf.

Conclusion

The principal purpose of professionalism is to generate and maintain a core sense of self-respect within lawyers individually and the bar generally. The respect of the public can be achieved only after that internal effort has been successful. I believe that the legal profession is not as far off this mark as many seem to think. Professionalism of the kind that I have discussed here this evening exists to a much healthier degree within the bar than is commonly recognized. The undeniable economic pressures and difficult moral choices faced in modern law practice are not, in and of themselves, reducing professionalism.

Despite the modern challenge of economic competition among lawyers with diverse moral perspectives, in a society that contains not only demanding clients but also some individuals who believe that financial success is itself a moral evil, the truth of the matter is that lawyers today accept and honor the basic values of professionalism as much as they ever have. Lawyers as a whole remain dedicated to excellence, committed to accountability, and involved in the bar's responsibility to subsidize legal services to the poor. Re-thinking professionalism, then, is a healthy exercise. Although it reveals the appropriate criticisms we can make of ourselves as lawyers, it also demonstrates that we should not be cynical or defensive about our professional roles.

In concluding my remarks here this evening, I want to convey my special heartfelt thank you to the Board of Governors of the State Bar

Association, to Executive Director Sandi Tabor and her capable staff of dedicated bar professionals, and to all of you as members who so willingly take valuable time out of your daily lives to make our Association one of the absolute very best this country has to offer.

I also take this means to publicly convey my special thanks and appreciation to all of my law partners at the Vogel Law Firm for their able assistance and willingness to cover for me while I have been otherwise engaged in a variety of activities on behalf of our profession. I do not always take the time as I should to express appreciation and my deep gratitude for all of that support and assistance I have received, but I do so publicly this evening.

I also want to recognize my family, all of whom have so unselfishly supported me in all of my work in and outside the practice of law and this Association, as time devoted by me in those endeavors takes away from their needs. I am particularly gratified to have my sister, Marjorie, and her husband, Jim Campbell, of Grand Forks; my brother, Carl, of Bismarck, and my children, daughter, Laura, and her husband, William Klomstad, and the apple of my eye and one who receives a great deal of attention from Grampa when he's here, our only grandson, Brekken Klomstad, of Sioux City, Iowa, that they were able to join us. My daughter, Bethany, and her friend, Stephan Lindemann, are also in attendance, and all of your presence here tonight means a lot to me.

Also seated at my guest tables are my secretary of 11 1/2 years, Zue Zan Hanna, and the lead secretary of the Vogel Law Firm for more than 40 years, Lucille Campbell.

I am also honored to have as my guests the Honorable Myron H. Bright of the United States Circuit Court of Appeals for the Eighth Circuit and his wife, Fritzie; and then, of course, I'm particularly pleased that the 1990 recipient of the Distinguished Service Award and my friend and law partner for nearly 30 years, and the undisputed dean of the North Dakota trial bar, Mart R. Vogel, and his wife, Lois, could also join us.

Lastly, I want to especially recognize my dear wife of nearly 40 years, Carol Beth. When I went to law school I didn't have an academic scholarship, but I did have something far more important in what I refer to as the "blonde scholarship." Carol Beth filled that role completely then and has loyally and actively done so continuously ever since. She has wholeheartedly supported and participated with me in all of my professional and civic activities. Without her love and devotion, none of this would have been possible.

Congratulations are also conveyed by me to the recipients of this year's 40- and 50-year recognition awards, to all of the lawyers of North Dakota who were specially recognized for their pro bono work activities, to Senator David Nething for his long and distinguished career in North Dakota's legislature and the recipient of special recognition at today's luncheon, and to the recipient of this year's Community Service Award, Dann Greenwood, of Dickinson, and also to the recipient of the Liberty Bell Award, Bonnie Poluchek of Bismarck, for her valuable contributions to public service to make North Dakota just a great place to live.

In final conclusion, I want all of you to know that I accept this recognition with humility and humbleness. I thank you for it. It is my hope and desire that I will continue to be worthy of this recognition which you have so graciously bestowed upon me this evening. Thank you.

NOTARY-REPORTER'S CERTIFICATE

STATE OF MINNESOTA)

SS.)

)

COUNTY OF CLAY)

I, LaVonne J. Houts, a Notary Public within and for the County of Clay and State of Minnesota, do hereby certify:

That said Annual Meeting consisting of one hundred and eighteen (118) pages of typewritten material, was taken down by me in Stenotype at the time and place therein named, and was thereafter reduced to computer-aided transcription under my direction;

I further certify that I am not related to any of the parties nor interested in this matter directly or indirectly.

WITNESS my hand and seal this 28th of June, 1996.

LaVONNE J. HOUTS, R.P.R., R.M.R.

Notary Public

Clay County, Minnesota

SEAL

My Commission expires March 30, 1998.